

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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BRENDEN ALEXANDER FOSTER,  
  
Petitioner,  
  
v.  
  
GREGORY PETERS, *et al.*,  
  
Respondents.

Case No. 3:24-cv-00556-MMD-CLB

ORDER

**I. SUMMARY**

*Pro se* Petitioner Brenden Alexander Foster has filed a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 and an application for leave to proceed *in forma pauperis* (“IFP”). (ECF Nos. 1, 1-1 (“Petition”).) The Court finds good cause exists to grant Foster’s IFP application. This Court now reviews the Petition under the Rules Governing Section 2254 Cases (“Habeas Rules”).<sup>1</sup> For the reasons discussed below, this Court finds that the Petition is unexhausted and federal abstention is required.

**II. DISCUSSION**

Foster is a pretrial detainee in custody at the Humboldt County Detention Center in Winnemucca, Nevada, awaiting trial on his state criminal charges before the Sixth Judicial District Court of Nevada. (ECF No. 1-1 at 1.) In his Petition, Foster requests that the Court “release [him] from Humboldt County Detention Center until [his] pretrial on March 1, 2025.” (*Id.* at 7.) According to Foster, he has been in custody since his arrest on April 7, 2024, his pretrial hearing has been continued numerous times, and his trial has yet to be set. (*Id.* at 2.) Foster alleges that his prolonged pretrial detention violates his

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<sup>1</sup>This Court exercises its discretion to apply the rules governing § 2254 petitions to this § 2241 action. See Habeas Rule 1(b).

1 Fourteenth Amendment right to due process and his Sixth Amendment right to a speedy  
2 trial. (*Id.* at 2, 6.)

3 Habeas Rule 4 requires federal district courts to examine a habeas petition and  
4 order a response unless it “plainly appears” that the petitioner is not entitled to relief. This  
5 rule allows courts to screen and dismiss petitions that are patently frivolous, vague,  
6 conclusory, palpably incredible, false, or plagued by procedural defects. See *Valdez v.*  
7 *Montgomery*, 918 F.3d 687, 693 (9th Cir. 2019); *Hendricks v. Vasquez*, 908 F.2d 490,  
8 491 (9th Cir. 1990) (collecting cases). Because a federal habeas petitioner incarcerated  
9 by a state must give state courts a fair opportunity to act on each of his claims before he  
10 presents them in a federal habeas petition, federal courts will not consider his petition for  
11 habeas relief until he has properly exhausted his available state remedies for all claims  
12 raised. See *Boyd v. Thompson*, 147 F.3d 1124, 1128 (9th Cir. 1998). A claim remains  
13 unexhausted until the petitioner has given the highest available state court the opportunity  
14 to consider the claim through direct appeal or state collateral-review proceedings. See  
15 *O’Sullivan v. Boerckel*, 526 U.S. 838, 844-45 (1999); *Peterson v. Lampert*, 319 F.3d  
16 1153, 1158 (9th Cir. 2003) (en banc). The federal constitutional implications of a claim,  
17 not just issues of state law, must have been raised in the state court to achieve  
18 exhaustion. See *Woods v. Sinclair*, 764 F.3d 1109, 1129 (9th Cir. 2014); *Castillo v.*  
19 *McFadden*, 399 F.3d 993, 999 (9th Cir. 2005) (fair presentation requires both the  
20 operative facts and federal legal theory upon which a claim is based).

21 Although it is not clear what, if anything, Foster has filed before the state district  
22 court challenging his pretrial detention on the grounds he raises in his instant Petition,<sup>2</sup>  
23 Foster has not filed any case with the Nevada appellate courts.<sup>3</sup> As such, Foster has not

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25 <sup>2</sup>Notably, the Sixth Judicial District Court of Nevada does not have online docket  
records.

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27 <sup>3</sup>This Court takes judicial notice of the online docket records of the Nevada  
appellate courts.

1 demonstrated that he has fully exhausted his state court remedies. *See Picard v. Connor*,  
2 404 U.S. 270, 276 (1971) (holding that to properly exhaust state remedies on each claim,  
3 the habeas petitioner must “present the state courts with the same claim he urges upon  
4 the federal court”); *Bland v. California Dep’t of Corrections*, 20 F.3d 1469, 1473 (9th Cir.  
5 1994) (holding that a claim is not exhausted unless the petitioner has presented to the  
6 state court the same operative facts and legal theory upon which his federal claim is  
7 based). As a matter of simple comity, this Court is not inclined to intervene before giving  
8 the Nevada courts an opportunity to redress any violation of Foster’s constitutional rights.  
9 *See Coleman v. Thompson*, 501 U.S. 722, 731 (1991) (explaining that the exhaustion  
10 requirement is “grounded in principles of comity; in a federal system, the States should  
11 have the first opportunity to address and correct alleged violations of state prisoner’s  
12 federal rights”).

13 Moreover, Foster seeks federal judicial intervention in a pending state criminal  
14 proceeding, which is simply not available to him. The comity-based *Younger* abstention  
15 doctrine prevents federal courts from enjoining pending state court criminal proceedings,  
16 even if there is an allegation of a constitutional violation, unless there is an extraordinary  
17 circumstance that creates a threat of irreparable injury. *See Younger v. Harris*, 401 U.S.  
18 37, 53-54 (1971). The United States Supreme Court has instructed that “federal-court  
19 abstention is *required*” when there is “a parallel, pending state criminal proceeding.” *Sprint*  
20 *Comm’ns, Inc. v. Jacobs*, 571 U.S. 69, 72 (2013) (emphasis added); *Gilbertson v.*  
21 *Albright*, 381 F.3d 965 (9th Cir. 2004) (federal courts generally abstain from granting any  
22 relief that would interfere with pending state judicial proceedings). This case does not  
23 present extraordinary circumstances. Defendants in state criminal proceedings routinely  
24 allege that state criminal proceedings violate their constitutional rights, including  
25 fundamental rights, which makes this a regular occurrence, not an extraordinary  
26 circumstance. Foster’s situation is no different in substance from that of any criminal  
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1 defendant facing the potential loss of constitutional rights—including the most  
2 fundamental right to liberty—in a pending criminal prosecution. Because Foster faces no  
3 extraordinary or irreparable injuries, federal abstention is required.

4 Given the unexhausted nature of Foster's Petition and Foster's failure to  
5 demonstrate that federal abstention principals should be set aside, this Court dismisses  
6 the Petition without prejudice.

7 **III. CONCLUSION**

8 It is therefore ordered that the Motion for Leave to Proceed *In Forma Pauperis*  
9 (ECF No. 1) is granted.

10 It is further ordered that Foster's Petition for Writ of Habeas Corpus under 28  
11 U.S.C. § 2241 (ECF No. 1-1) is dismissed without prejudice. Foster is denied a certificate  
12 of appealability, as jurists of reason would not find dismissal of the Petition for the reasons  
13 stated herein to be debatable or wrong.

14 The Clerk of Court is further directed to (1) file the Petition (ECF No. 1-1); (2) add  
15 Nevada Attorney General Aaron D. Ford as counsel for Respondents<sup>4</sup>; (3) informally  
16 serve the Nevada Attorney General with the Petition (ECF No. 1-1), this Order, and all  
17 other filings in this matter by sending a notice of electronic filing to the Nevada Attorney  
18 General's office; (4) enter final judgment; and (5) close this case.

19 DATED THIS 16<sup>th</sup> Day of December 2024.

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MIRANDA M. DU  
22 UNITED STATES DISTRICT JUDGE  
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<sup>4</sup>No response is required from Respondents other than to respond to any orders  
27 of a reviewing court.  
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